

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JOSE GUADALUPE PEREZ-FARIAS,)	NO. CV-05-3061-MWL
et al.,)	
)	ORDER GRANTING DEFENDANTS'
Plaintiffs,)	MOTION FOR A PROTECTIVE ORDER
)	
vs.)	
)	
GLOBAL HORIZONS, INC.,)	
et al.,)	
)	
Defendants.)	
_____)	

Before the Court is Defendant Global Horizons Inc.'s ("Global's") motion for a protective order to quash Plaintiffs' notice of deposition for Defendant Mordechai Orian ("Orian") in Yakima, Washington. (Ct. Rec. 122).

I. BACKGROUND

On June 12, 2006, Plaintiffs issued a notice of deposition for Orian to take place in Yakima, Washington, on July 13, 2006. (Ct. Rec. 123-1, Exh. A). Global thereafter contacted counsel for Plaintiffs in an attempt to reschedule the deposition for California, where Orian lives and works.¹ (Ct. Rec. 123-1, p. 2).

¹Orian does not object to being deposed in California. (Ct. Rec. 123-1, p. 3).

1 Counsel for Plaintiffs refused. (Ct. Rec. 123-1, pp. 2-3).
2 Plaintiffs' counsel offered to pay half of Orian's expenses for
3 Orian to travel to Washington for his deposition. (Ct. Rec. 129,
4 p. 2). Global rejected the offer. (Ct. Rec. 123-1, Exh. C).
5 Counsel for Defendants Green Acre Farms, Inc., and Valley Fruit
6 Orchards, LLC, agreed to pay half the expense of Orian's coach
7 airfare from Los Angeles to Yakima, Washington, and Plaintiffs are
8 willing to pay the remaining half of this expense. (Ct. Rec. 129,
9 pp. 2-3). Global refused these requests and now seeks a
10 protective order quashing the deposition. (Ct. Rec. 123).

11 **II. GLOBAL'S MOVING ARGUMENTS**

12 Global contends that this Court should issue a protective
13 order to quash Plaintiffs' notice of deposition of Orian. (Ct.
14 Rec. 123-1, p. 3). Global indicates that, in 2005, they had their
15 Washington State Farm Labor Contractor's License revoked and,
16 therefore, they no longer operate in the state of Washington.
17 (Ct. Rec. 123-1, Exh. B, p. 2). Accordingly, Orian, a full time
18 resident of California and the President of Global, no longer
19 conducts any business in the state of Washington. (Ct. Rec. 123-
20 1, Exh. B, p. 2). As a result, Global asserts that it is an
21 unnecessary burden of time and money for Orian's deposition to
22 take place in Washington rather than in California. (Ct. Rec.
23 123-1, p. 3).

24 Global argues that the general rule is that a corporation and
25 its principals should be deposed at the corporation's place of
26 business, absent special conditions. *Clairmont v. Genuity, Inc.*,
27 2004 U.S. Dist. LEXIS 20784 (W.D. Wash. 2004) ("In the absence of
28 special circumstances, a party seeking discovery must go where the

1 desired witnesses are normally located This rule applies
2 even when the deponent is a defendant in the action"); *Cadent Ltd.*
3 *v. 3M Unitek*, 232 F.R.D. 625, 628 (C.D. Cal. 2005) ("The
4 deposition of a corporation by its agents and officers should
5 ordinarily be taken at its principal place of business").
6 Global's principal place of business is in California, and Global
7 contends that Plaintiffs have made no showing of special
8 conditions that would require the deposition of Orian to take
9 place in Washington as opposed to California. (Ct. Rec. 123-1,
10 pp. 3-4).

11 **III. PLAINTIFFS' RESPONSE**

12 Plaintiffs argue that it would be more convenient and less
13 expensive for all parties if the deposition was held in Yakima,
14 Washington. (Ct. Rec. 129, pp. 3-4). Specifically, Plaintiffs
15 indicate that all of the attorneys in this matter have offices in
16 Washington state, with the exception of counsel for Global, whose
17 office is in Chicago, Illinois; all Plaintiffs reside in Yakima
18 County; and the businesses of Defendants Green Acre Farms and
19 Valley Fruit Orchards are similarly located in Yakima County.
20 (Ct. Rec. 129, p. 3; Ct. Rec. 130). Plaintiffs additionally note
21 that Orian traveled to Washington state regularly in the course of
22 doing business with Green Acre Farms and Valley Fruit Orchards;
23 Global's website documents that Orian has been present in the
24 Yakima Valley during the pruning season, the thinning season and
25 to present at a local conference; Orian traveled to Washington in
26 April to appear at a press conference and enter into a contract
27 with the United Farm Workers; and Global continues to maintain a
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1 registered agent in Yakima, Washington. (Ct. Rec. 129, p. 3; Ct.
2 Rec. 130). Accordingly, Plaintiffs contend that it will be more
3 convenient, less time consuming, and less expensive for the
4 parties to hold Orian's deposition in Washington. (Ct. Rec. 129,
5 pp. 5-7).

6 Plaintiffs assert that Global has failed to allege any undue
7 burden or expense associated with having his deposition taken in
8 Washington. (Ct. Rec. 129, p. 4). Plaintiffs further assert that
9 they are of limited financial means and are less able to bear the
10 expense of travel than a large corporate defendant like Global.
11 (Ct. Rec. 129, p. 6). Finally, Plaintiffs indicate that they
12 remain willing to pay half of the coach airfare for Orian to
13 travel from Los Angeles to Yakima and that Defendants Green Acre
14 Farms and Valley Fruit Orchards are willing to share this cost to
15 avoid the expense and inconvenience of traveling to California.
16 (Ct. Rec. 129, p. 8).

17 **IV. GLOBAL'S REPLY**

18 Global responds that the general rule is that a corporate
19 defendant must be deposed at its principal place of business.
20 (Ct. Rec. 131). Global asserts that neither Global nor Orian
21 chose to be sued in Washington, they no longer have business
22 there, and their counsel is not located there; accordingly, Orian
23 is entitled to be deposed at Global's place of business in Los
24 Angeles, California. (*Id.*)

25 Global contends that "when the plaintiff seeks to depose the
26 defendant at a location other than the defendant's place of
27 business and the defendant objects, the plaintiff has the

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1 affirmative burden of demonstrating peculiar circumstances which
2 compel the court to order the depositions to be held in an
3 alternate location." *Marin v. Nationwide Fed. Credit Union*, 229
4 F.R.D. 362, 363 (D. Conn. 2005). Global argues that the
5 deposition notice of Orian should be quashed, and Orian should be
6 deposited in Los Angeles, California. (Ct. Rec. 131, p. 6).

7 **V. DISCUSSION**

8 **A. Protective Orders**

9 For "good cause shown," a court may issue a protective order
10 that "discovery may be had only on specified terms and
11 conditions." Fed. R. Civ. P. 26(c)(2). Fed. R. Civ. P. 26(c) is
12 a safeguard to protect parties and witnesses in view of Fed. R.
13 Civ. P. 26(b)'s broad discovery rights. *United States v. Columbia*
14 *Broadcasting System, Inc.*, 666 F.2d 364, 368-369 (9th Cir. 1982).
15 Under Fed. R. Civ. P. 26(c), this Court may issue protective
16 orders for persons subject to a subpoena and "for good cause shown
17 . . . may make any order which justice requires to protect a party
18 or person from annoyance, embarrassment, oppression, or undue
19 burden or expense, including . . . that the disclosure or
20 discovery may be had only on specified terms and conditions,
21 including a designation of the time or place."

22 To obtain a protective order, the party resisting discovery
23 or seeking limitations must show "good cause" for its issuance.
24 Fed. R. Civ. P. 26(c); *Jepson, Inc. v. Makita Elec. Works, Ltd*, 30
25 F.3d 854, 858 (7th Cir. 1994). Generally, a party seeking a
26 protective order has a "heavy burden" to show why discovery should
27 be denied and a strong showing is required before a party will be

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1 denied the right to take a deposition. *Blankenship v. Hearst*
2 *Corp.*, 519 F.2d 418, 429 (9th Cir. 1975). "If the motion for
3 protective order is denied in whole or in part, the court may, on
4 such terms and conditions as are just, order that any party or
5 other person provide or permit discovery." Fed. R. Civ. P.
6 26(c).

7 **B. Place of Deposition**

8 The deposition of a party (or its officers, employees, etc.)
9 may be noticed wherever the deposing party designates, subject to
10 the Court's power to grant a protective order. *Turner v.*
11 *Prudential Ins. Co. of America*, 119 F.R.D. 381, 383 (M.D. N.C.
12 1988). The general rule is that, while a court may order a
13 defendant to appear at any convenient place, case law indicates
14 that it will be presumed that the defendant will be examined at
15 his residence or place of business or employment. *Farquhar v.*
16 *Shelden*, 116 F.R.D. 70, 72 (E.D. Mich. 1987). In the absence of
17 special circumstances, "a party seeking discovery must go where
18 the desired witnesses are normally located." *Id.*

19 **C. Analysis**

20 Global's corporate offices are located in Los Angeles,
21 California, and Orian currently resides in Malibu, California,
22 thus, under the general rule, the proper place for the deposition
23 of Orian is California. Plaintiffs, however, chose to notice the
24 deposition for Washington, rather than California. Therefore,
25 special circumstances must be presented in order to overcome the
26 general rule and to warrant holding the deposition in the state of
27 Washington.

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1 A protective order may be obtained as to the location of the
2 deposition. Fed. R. Civ. P. 26(c). Federal Rule of Civil
3 Procedure 26(c) provides that a court in which the action is
4 pending "may make any order which justice requires to protect a
5 party or person from annoyance, embarrassment, oppression, or
6 undue burden or expense, including . . . that the disclosure or
7 discovery may be had only on specified terms and conditions,
8 including a designation of the time or place."

9 In making its order, the Court considers the convenience of
10 the parties and relative hardships in attending at the location
11 designated. The burden is on the person seeking the protective
12 order to demonstrate good cause. *U.S. v. \$160,066.98 from Bank of*
13 *America*, 202 F.R.D. 624, 626 (S.D. Cal. 2001).

14 Global argues that it is unduly expensive and inconvenient
15 for Orian, Global's President, to travel to Washington to attend a
16 full-day deposition. (Ct. Rec. 131, p. 5). Only "undue burden or
17 expense" provides a potential basis for relief from legitimate
18 discovery demands. *U.S. v. \$160,066.98 from Bank of America*, 202
19 F.R.D. at 628. "Undue" burden requires parties to show more than
20 expense or difficulty. *Id.* Here, the travel expenses are not an
21 undue expense since Plaintiffs and Defendants Green Acre Farms and
22 Valley Fruit Orchards agree to bear the costs associated with
23 Orian's travel to attend the deposition in Washington. (Ct. Rec.
24 129, p. 8). Moreover, in light of the potential corporate
25 resources, Global has not shown that the expense of this travel is
26 unreasonable. *U.S. v. \$160,066.98 from Bank of America*, 202
27 F.R.D. at 628-629 (Rejecting arguments that airfare of \$3,031 to
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1 \$4,712 per person from Pakistan is undue burden because "no
2 showing of inability to afford that expenditure due to
3 impecuniousness").

4 Nevertheless, Orian, a named defendant, is not before this
5 Court by choice. As noted by Global, neither Global nor Orian
6 chose to be sued in Washington, they no longer have business in
7 Washington, and their counsel is not located in that state. (Ct.
8 Rec. 131, p. 3). The evidence before the Court is that Orian does
9 not currently have any contact with or do any business in the
10 state of Washington, and he currently resides in California.
11 Global's corporate offices are also located in California, and
12 Counsel for Global and Orian do not maintain offices in
13 Washington. In addition, requiring Orian to travel to the state
14 of Washington to attend a full day deposition will necessitate an
15 overnight stay and more than a full day away from his office.
16 (Ct. Rec. 131, p. 5). Furthermore, courts have held that
17 plaintiffs normally cannot complain if they are required to take
18 discovery at great distances from the forum. *U.S. v. \$160,066.98*
19 *from Bank of America*, 202 F.R.D. at 627.

20 The Court finds that Plaintiffs' inconvenience and expense
21 associated with deposing witnesses outside of Washington were
22 foreseeable, are not "undue," and do not necessarily outweigh
23 Orian's potential burden and inconvenience if required to travel
24 to Washington. The Court finds that no special circumstances have
25 been shown to exist in this case in order to depart from the
26 general rule that a plaintiff may expect to depose the defendant
27 at the latter's "residence or place of business." *Farquhar*, 116
28 F.R.D. at 72.

1 **VI. CONCLUSION**

2 For the foregoing reasons, the Court **GRANTS** Global's motion
3 for a protective order regarding the place of Orian's deposition.
4 (**Ct. Rec. 122**). The noticed deposition of Orian, scheduled to
5 take place in Yakima, Washington, on July 13, 2006, is **QUASHED**.
6 The deposition of Orian shall be noticed and proceed at a date and
7 time convenient to all parties at Global's principal place of
8 business in Los Angeles, California, or at another location in
9 California as may be agreed upon by the parties.

10 The District Court Executive is directed to enter this order
11 and forward copies to counsel for Plaintiffs and Defendants.

12 IT IS SO ORDERED.

13 DATED this 27th day of July, 2006.
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16 S/ Michael W. Leavitt
MICHAEL W. LEAVITT
17 UNITED STATES MAGISTRATE JUDGE
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